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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1966

CARL W. CACCONIE
6465 E. Liberty
Fresno, CA 93727

A C C U S A T I O N

Respiratory Care Practitioner License No. 21206

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about January 6, 2000, the Respiratory Care Board issued Respiratory Care Practitioner License Number 21206 to Carl W. Cacconie (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2005, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are

1 to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
12 or duties of a respiratory care practitioner. The record of conviction or a certified copy
13 thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2 (commencing
18 with Section 500).

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications, functions,
22 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
23 of this article. The board shall order the license suspended or revoked, or may decline to
24 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
25 been affirmed on appeal or when an order granting probation is made suspending the
26 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
27 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
28 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or

1 indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of a
5 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting
10 the violation of or conspiring to violate any provision or term of the Act.”

11 COST RECOVERY

12 9. Section 3753.5, subdivision (a) of the Code states:

13 "In any order issued in resolution of a disciplinary proceeding before the board, the
14 board or the administrative law judge may direct any practitioner or applicant found to have committed
15 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
16 prosecution of the case."

17 10. Section 3753.7 of the Code states:

18 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
19 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
20 and service fees."

21 11. Section 3753.1 of the Code states:

22 "(a) An administrative disciplinary decision imposing terms of probation may include,
23 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
24 monitoring the probation. "

25 FIRST CAUSE FOR DISCIPLINE

26 (Conviction)

27 12. Respondent is subject to disciplinary action under sections 3750(d),
28 3750(g), 3752 [conviction] and CCR 1399.370(a) in that on October 8, 2004, respondent was

1 convicted upon his plea of no contest to violating Penal Code section 272(b)(i), [persuading or
2 luring a minor 12 years of age or younger].

3 13. On or about March 24, 2003, a criminal complaint titled *People of the State*
4 *of California vs. Carl W.D. Cacconie* was filed in Superior Court, Madera County, case no. MCR
5 14964. Count 1 alleged that on or about March 16, 2003, respondent committed a violation of
6 Penal Code section 288(a), lewd and lascivious act upon a child under age fourteen, a felony.
7 Count 2 alleged that on or about March 16, 2003, respondent committed a violation of Penal Code
8 section 288(a), lewd and lascivious act upon a child under age fourteen, a felony.

9 14. On or about April 14, 2003, respondent entered a plea of not guilty.

10 15. On or about April 30, 2003, Information no. MCR14964 was filed against
11 respondent. Count 1 alleged that on or about the summer of 2002, respondent committed a
12 violation of Penal Code section 288(a), lewd and lascivious act upon a child under age fourteen, a
13 felony. Count 2 alleged that on or about the fall of 2003, respondent committed a violation of
14 Penal Code section 288(a), lewd and lascivious act upon a child under age fourteen, a felony.
15 Count 3 alleged that on or about January of 2003, respondent committed a violation of Penal Code
16 section 288(a), lewd and lascivious act upon a child under age fourteen, a felony.

17 16. On or about May 7, 2003, respondent entered a plea of not guilty.

18 17. On or about October 8, 2004, a trial confirmation hearing was held before
19 Judge Edward P. Moffat. The People's motion to amend the information to add Count 4, a
20 violation of Penal Code 272(b)(i) and Count 5, a violation of Penal Code 272(b)(i), was granted.
21 Respondent entered a plea of no contest to Counts 4 and 5. The Court found a factual basis for the
22 plea, and accepted the plea. The Court then dismissed the remaining counts on the People's
23 motion in the interests of justice.

24 18. On or about October 8, 2004, Judge Moffat granted respondent three years
25 probation. He ordered that respondent be confined at Madera County Department of Corrections
26 for one day, and ordered him to pay a fine of \$945.00, a \$100.00 restitution fine, payable at a rate
27 of \$40.00 per month beginning November 1, 2004. Respondent accepted the terms of probation.

28 19. Therefore, respondent's license is subject to discipline in that he was

1 convicted of violating Penal Code 272(b)(i), which is substantially related to the practice of
2 respiratory care, and a violation of Business and Profession code sections 3750(d), 3750(g), 3752
3 and CCR 1399.370(a).

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

7 1. Revoking Respiratory Care Practitioner License Number 21206, issued to
8 Carl W. Cacconie.

9 2. Ordering Carl W. Cacconie to pay the Respiratory Care Board the costs of
10 the investigation and enforcement of this case, and if placed on probation, the costs of probation
11 monitoring;

12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: January 10, 2005

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15 Original signed by Liane Zimmerman for:

16 STÉPHANIE NÚNEZ

17 Executive Officer

18 Respiratory Care Board of California

19 Department of Consumer Affairs

20 State of California

21 Complainant
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